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## NEW YORK ATTORNEY SEEKS LEGAL ACTION AGAINST ROBERT VESCO

## Charges Filed Alleging Fraud

[Article by S. A.; San Jose, La Nacion, Spanish, 1 March 1973, p 47]

This morning, Simon Nusbaum, an attorney from New York City who represents thousands of investors allegedly cheated by the mutual fund firms controlled by Robert Vesco, will appear before a San Jose penal judge to ask that legal action be taken against Vesco and his firm. Several deputies will be witnesses.

In the course of his presentation before the legislative commission that is investigating the activities of the mutual fund firms and Vesco in the country, attorney Nusbaum insisted that immediate action should be taken against Vesco on behalf of the thousands of persons involved and in the interest of Costa Rica's prestige abroad, inasmuch as it is thought that civil action in the United States could be delayed due to the unique attitude taken by Vesco and his firm before the SEC (Security ~~Economic Control~~ [sic]) and the group of lawyers advising him. **EXCHANGE COMMISSION**

Refusal To Testify

Nusbaum took a firm stand, saying that one of the ways in which Vesco was paralyzing the action of the SEC consisted of refusing to testify before that body, basing his refusal on the Fifth Amendment of the Constitution of the United States, which allows a person not to answer legal questions if he believes that his testimony may subject him to a criminal trial. Anticipating that things might "get hot" in the United States, Vesco fled to Costa Rica in case the matter should go to the criminal courts, attorney Nusbaum said.

Grounds for Action

The legal representative of the persons whose OIS [sic, presumably IOS; expansion unknown] investments are involved told the members of the commission that they should immediately accompany

him when he appeared before a local judge tomorrow, because after that it might be too late. "I only want you to be present when I present the evidence I have against Vesco and his firm."

When Deputy Jorge Solano Chacon told the attorney that here no judge could initiate legal action concerning a crime committed outside of the national jurisdiction, Nusbaum said:

"That aspect has been duly examined and studied; there are grounds for believing that one can proceed. Mr Vesco has a Costa Rican passport. Consequently, this is not a 'one-way street.' Furthermore, some of the things of which he is accused and of which I have evidence were committed by his associates in this country and they have injured persons in Costa Rica. Everything seems to indicate that we do have legal jurisdiction for proceeding," he said.

### Three Deputies

During a brief discussion, the investigating commission agreed to appoint legislative members Dr Longino Soto Pacheco, Rafael A. Valladares Mora (chairman), and Angel E. Solano Calderon to accompany attorney Nusbaum at his private appearance before the judge today. "I am informing Vesco of my intentions, but these are risks one must run instead of allowing this country to become an inferno if measures are not taken against these investments," he said.

### 2.5 Billion Dollars

After complaining that the SEC and the lawyers representing persons harmed by "Vesco's empire" had not taken joint legal action in the United States, prompted by the belief that the SEC "had its own methods that were more effective," Nusbaum said, speaking through his interpreter Mario Ulate, that "after Vesco took control of the IOS...in 1969, he had control...of 2.5 billion dollars, but that sum dropped to 750 million. Due to the means...he used, Vesco cannot make use of those holdings in Costa Rica or in any part of the world, no matter how powerful he might be."

### Banking Commission in Luxembourg

"In order to give you an idea of Vesco's special system of operation," Nusbaum added, "I might cite the case of a banking commission in Luxembourg, which is working to move 120 million dollars back into that country, money which was transferred from a bank there to the Bahamas. The problem is that the bank also belongs to Vesco."

He later pointed out that the groups of lawyers he represented had an advantage over the SEC because that organization only has jurisdiction in the United States, while they could initiate action in many countries whose citizens had been affected. "While

I try to protect the interests of my clients, I shall also try to help them to avoid similar dangerous situations with respect to certain investments made abroad," Nusbaum said.

### Friends Here

In another part of his presentation, the investors' legal counsel said that before accepting the invitation from the investigating commission to appear before it, he considered at length the consequences of that type of public appearance, "especially," he said, "because many of my plans go beyond the information to Vesco himself. I believe that the decision or decisions made by this commission may have influence on the attitude taken in the United States, since this is a democratic country, a legal paradise as well, and they know that there. Consequently, I do not believe that Vesco will begin to move money already here, since he would disillusion his friends and he does have friends here."

### Evidence

"The evidence against Vesco and his group of masterminds fills 20,000 pages," Nusbaum said, "and many of those pages are already in your hands. I do not believe that any judge from a democratic country can ignore this. Consequently, I firmly believe that legal action taken here will help to get criminal action started in the United States, since the SEC civil court is paralyzed by the constitutional aspects of the Fifth Amendment which I mentioned. It will also help to prevent Vesco from transferring here half of the IOS resources still in the Bahamas." Following his appearance, attorney Nusbaum spoke privately with members of the commission.

### Judge Throws Out Legal Action Against Vesco

[Article by S. A.; San Jose, La Nacion, Spanish, 2 March 1973, p 47]

Yesterday, first penal court judge Atilio Vincenzi rejected the accusation against Roberto Vesco presented that same day by Simon Nusbaum, the attorney representing a group of allegedly cheated investors. The judge said there was a lack of legal grounds and the legal office was immediately notified of the same.

The decision was based on Articles 6 and 8 of the Penal Code, which state:

Article 6. Legal action may be instituted in the case of punishable acts committed abroad and Costa Rican law may then be applied when:

1) their results occur entirely or partially within the national territory;

2) they were committed by persons in the service of Costa Rica and not tried where committed due to diplomatic or functional immunity; and

3) they are perpetrated against Costa Rican citizens or their rights.

Article 8 says:

"In order for the crimes mentioned in Article 5 to be prosecuted in Costa Rica, only government action is required. With respect to crimes included in Articles 6 and 7, the criminal must be within the national territory..

"In addition, in the cases included in Article 6, action is taken on the basis of the complaint of the defendant, and in the case of Article 7, penal action may only be initiated by the competent organs."

Article 5 speaks of crimes committed outside the territory and Article 7 pertains to international crimes.

Attorney Jose Roberto Steiner, representing the public prosecutor, said that "due to the fact that the resolution rejecting the accusation is well-founded, no appeal is possible. In view of this, and since a simple accusation is involved, the matter will be closed."

#### Attempt To Stop Activities

In the opinion of legal advisers intimately linked with the American attorney Simon Nusbaum, by presenting his accusation against Roberto Vesco in the first penal court of San Jose, Nusbaum had hoped that if the accusation were accepted and when the court once had very broad power, it could paralyze Vesco's activities in the country, which is deemed to be the first positive step of the thousands of persons allegedly cheated and now represented by Nusbaum.

#### Budding Political Disagreement

The accusation was presented by attorney Nusbaum at 1000 hours yesterday morning before the clerk of the first penal court, Gerardo Calvo Picado, and witnessed by members of the press. The commission investigating the activities of the mutual funds firms in the country and Robert Vesco had, on Wednesday afternoon, appointed a group to accompany attorney Nusbaum at his appearance. Out of the five members of the legislature appointed, Attorney Guillermo Jimenez Ramirez, Dr Longino Soto Pacheco, Rafael A. Valladares Mora,

attorney Edgar Arroyo Cordero, and Angel E. Solano Calderon, only the first three, who represent different opposition groups, were present at the hearing.

Unofficial sources contend that with respect to the "Vesco case," a political disagreement was brewing, and it was said that the absence of legislators Arroyo Cordero and Solano Calderon, who represent the National Liberation majority wing, had to do with a preconceived position relating to the affinity between certain mutual fund officials and official sectors or ones close to them because of joint investments in the country.

#### Thousands of Victims

In the course of his accusation, which was made verbally and which was recorded by court clerk Gerardo Calvo, New York attorney Nusbaum said that he "was making it on behalf of hundreds of thousands of victims all over the world."

#### Loan

Nusbaum said in his presentation that "in the loan that Vesco made out of IIT [~~operation unknown~~] funds to the San Cristobal Industrial Agriculture Company for 2.15 million dollars, a so-called commission of 150,000 dollars was paid to a middleman who had brought Vesco to Costa Rica. He gave it to Clovis McAlpin, who in turn presented it to important persons who own the San Cristobal company. I am leaving written proof of the so-called loan in the form of photostatic copies that I am attaching to the original, and I am also providing proof of payment of the...150,000 dollars. This proof is a sworn confession of a Mr R. P. made when he was questioned by the SEC (Securities Exchange Commission) in New York. When the SEC investigator asked R. P. the amount he was paid, he said 150,000."

#### Money to Local Companies

Continuing with his charges, Nusbaum said that "the most important part of the operation in Costa Rica was the formation of six companies and the transference of very large sums of money to these companies, in addition to Vesco's action to establish residency here. One of his attorneys, Howard Cerny, told the SEC in sworn testimony that Vesco is trying to establish the center of his operations in Costa Rica and Cerny came to this country to set this up with the law office of Facio-Fournier-Canas."

#### Operations in Costa Rica

Nusbaum said that the "detailed allegations concerning the operations of Vesco and his group in Costa Rica are contained in charges filed before the New York Federal Court and they are shown in even more detailed form in the civil charges of the SEC (he turned over the respective documents). The operations in Costa Rica have also been described in detail

in the most respectable financial newspapers in the United States, including the Wall Street Journal and others.

"The situation is changing," Nusbaum continued, "because the SEC has indicated that instead of closing the civil case, it will probably submit it to a criminal court immediately."

Vesco May Disappear

The New York attorney said that "due to the fact that many of the assets mentioned are here, and due to the great danger that Mr Vesco might disappear from the United States and Costa Rica, since there are still large sums in the Bahamas and most certainly in other countries as well, we ask the court to aid the victims by taking immediate protective action."

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